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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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CHAPTER 96

Crimes Against Public Justice

RESCUES AND ESCAPES

10007. Escaped prisoners.

Where man is bound over to district court in a county without a jail and is lodged in jail in another county and escapes, escape constitutes another felony and county where escape occurs is liable for cost of apprehending and returning prisoner, but sheriffs of both counties hold outstanding warrants and may enter into an agreement to share expense. Op. Atty. Gen., (341a), April 24, 1940.

PUBLIC RECORDS

10013. Injury to public records.—Every person who shall willfully and unlawfully remove, mutilate, destroy, conceal, alter, deface, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office or with any public officer by authority of law or any public officer or employee who permits any other person to do so shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than \$500.00, or by both. (As amended Act Apr. 28, 1941, c. 553, §7.)

PERJURY AND OTHER CRIMES

10016. Perjury defined.**1. What constitutes.**

Perjury means not only testifying under oath to what is untrue, but that the one so testifying knew and ap-

preciated at moment of giving testimony that it was false and untrue. Priebe, 290NW552. See Dun. Dig. 7474. What happens to perjurers. 24MinnLawRev727.

10034. Compounding crimes.

One convicted of compounding a crime on plea of guilty cannot question the conviction in a disbarment proceeding. Wallace, 296NW534. See Dun. Dig. 678.

10053. Falsely auditing and paying claims.

Evidence held to show false audit and payment of claims on state. State v. Elsberg, 295NW913. See Dun. Dig. 8846c.

A county commissioner auditing and allowing a fraudulent claim is guilty of a felony and an infamous crime, and on conviction his office is automatically vacated. Op. Atty. Gen. (126G), Oct. 11, 1940.

10055. Conspiracy defined—How punished.

Immunity of judicial officers to civil action for judicial acts cannot be avoided by pleading that acts complained of were results of a conspiracy previously entered into. Linder v. F., 295NW299. See Dun. Dig. 4959.

The labor injunction in Minnesota. 24MinnLawRev757. The state legislatures and unionism. 38MichLawRev 987.

10060-1. Printing and circulating certain documents prohibited.

A "notice before suit" signed by a justice of the peace would violate this section. Op. Atty. Gen., (161a-8), Mar. 19, 1941.

CHAPTER 97

Crimes Against the Person

HOMICIDE

10068. Murder in second degree.—Such killing of a human being, when committed with a design to effect the death of the person killed or of another, but without deliberation and premeditation, or when such killing is committed without a design to effect the death of the person killed or of another and without deliberation or premeditation by a person attempting to commit or engaged in the commission of a rape, assault with an attempt to commit rape, indecent assault, or sodomy, or any thereof either upon or affecting the person killed or otherwise, is murder in the second degree and shall be punished by imprisonment in the state prison for the offender's natural life. (As amended Act Apr. 19, 1941, c. 314, §1.)

Evidence sustained verdict of murder in second degree. State v. Palmer, 288NW160. See Dun. Dig. 4233.

10070. Murder in third degree.—Such killing of a human being, when perpetrated by act eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual, or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit, any felony, except rape, assault with an attempt to commit rape, indecent assault, or sodomy, either upon or affecting the person killed or otherwise, is murder in the third degree, and shall be punished by impris-

onment in the state prison for not less than seven years, nor more than thirty years. (As amended Act Apr. 19, 1941, c. 314, §2.)

Act Apr. 19, 1941, c. 314, §3, provides that all offenses committed, and all penalties and punishments incurred therefor, prior to the taking effect hereof, shall be prosecuted and punished in the same manner and with the same effect as if this amendment had not been passed. Also applicable to §10068.

10073. Manslaughter defined.

Because in manslaughter case evidence as strongly supported an inference of innocence as it did one of guilt, a new trial was ordered. State v. Larson, 292NW 167. See Dun. Dig. 4247.

10076. Killing of unborn child or mother.

Evidence held sufficient to sustain a conviction of manslaughter in first degree incident to an abortion. State v. Lemke, 290NW307. See Dun. Dig. 4240a.

ASSAULT

10098. Assault in second degree defined—How punished.**3. Indictment.**

Two offenses cannot be joined in one information but means for committing same offense can be alleged in alternative. Op. Atty. Gen., (133B-7), April 29, 1940.

LIBEL AND SLANDER

10120. Slander of women.

School board member convicted of misdemeanor of slander of women is not subject to removal. Op. Atty. Gen., (475E), May 2, 1940.

CHAPTER 98

Crimes Against Morality, Decency, Etc.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

10125. Carnal knowledge of children.**6. Evidence.**

In a prosecution for carnal knowledge, evidence of prior acts of sexual intercourse of complaining witness

with defendant is admissible as disclosing inclination of parties to commit act complained of and as corroborative of specific charge. State v. Elijah, 289NW575. See Dun. Dig. 8243a.

Ordinarily evidence showing that the complaining witness had sexual intercourse with other men is not ad-

missible in a prosecution for carnal knowledge. *Id.* See Dun. Dig. 8243a.

Evidence held to sustain a conviction of carnal knowledge of a girl under 14 years of age. *State v. McClain*, 292NW753. See Dun. Dig. 8244.

10132. Indecent assault.

Disbarment will follow where accused attorney has been found guilty of felony of indecent assault. *Van Wyck*, 290NW227.

CRIMES AGAINST CHILDREN, ETC.

10135. Desertion of child and pregnant wife.

Under this section there must be proof of some affirmative act or acts constituting desertion and intent to wholly abandon. *Op. Atty. Gen.*, (133B-1), Nov. 16, 1939.

Man leaving wife and children and going to another state and sending wife money for a number of months before stopping, could not be prosecuted under §10135, but could be prosecuted under §10136 for non-support, and could probably be extradited under the uniform extradition act adopted by both states. *Op. Atty. Gen.* (193B-1), Aug. 14, 1940.

10136. Failure to support wife or child.

Abandonment of a child is a continuing offense, and limitation does not run during time father is outside state, and he is a fugitive from justice if offense charged is a few days prior to date of leaving state, and same result is accomplished if father returns to state and again leaves. *Op. Atty. Gen.*, (193B-1), Sept. 28, 1939.

Under this section no proof of affirmative acts is necessary, but merely proof of omission, or failure to perform duty of supporting minor children or wife in destitute circumstances. *Op. Atty. Gen.*, (133B-1), Nov. 16, 1939.

Charge may be brought in county where wife and children reside. *Id.*

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10137. Prosecution.—On complaint being made in writing and under oath by the wife, or by an official or member of the governing body of the town, village, city or county wherein such wife is a resident, or by any reputable person to a justice of the peace or judge of a municipal court, accusing any person of the offense defined in Section 10136, the justice or judge shall issue his warrant against the person accused, directed to the sheriff or constable of the county, commanding him forthwith, to bring such accused person before the justice or judge to answer such complaint. (As amended Act Apr. 23, 1941, c. 396, §1.)

10140. Keepers of public places to exclude minors.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. *Op. Atty. Gen.* (218J-12), Sept. 5, 1940.

10142. Minors unaccompanied, etc.—Playing pool, billiards, or bowling prohibited, where—How punished.—Any person under the age of eighteen years or who is a minor pupil in any school, college or university is prohibited from playing pool, or billiards in any public pool or billiard room or in any public place of business, unless accompanied by his parent or guardian, and any person under the age of eighteen years or who is a minor pupil in any school, college or university who shall engage in any game of pool or billiards in any such place, or frequent or loiter within any pool or billiard room, or any public place of business where pool or billiards are played, unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding ten dollars. (As amended Act Mar. 14, 1941, c. 65, §1.)

It is doubtful that an instructor in physical education in a school could be considered a "guardian". *Op. Atty. Gen.* (802B), Dec. 7, 1940.

It is doubtful that a duck pin alley is a "bowling alley". *Op. Atty. Gen.*, (802B), Feb. 25, 1941.

10143. Keepers of public places to exclude—Penalty.—Every keeper or person in charge of any pool or billiard room, or public place of business where pool or billiards are played who shall permit or allow any person under the age of eighteen years or any minor pupil of any school, college or university to

play any or said games, therein, or to gather in, loiter or frequent any such place unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and be punished by a fine of not less than \$25.00 or by imprisonment in the county jail not exceeding 30 days. (As amended Act Mar. 14, 1941, c. 65, §1.)

It is doubtful that a duck pin alley is a "bowling alley". *Op. Atty. Gen.*, (802B), Feb. 25, 1941.

10149. Liquors in school grounds or houses.

This section has been superseded or modified by redefinition of non-intoxicating malt liquors, and does not apply to 3.2 beer. *Op. Atty. Gen.*, (622a-13), Mar. 4, 1941.

HABITUAL OFFENDERS

10157. Habitual offenders defined—Penalties.

A woman pregnant with her fourth illegitimate child may be sentenced to reformatory at Shakopee under this section upon conviction of a third charge of fornication, though limitations has expired as to first birth. *Op. Atty. Gen.*, (133B-32), Nov. 16, 1939.

DANCE HALLS

10161. Definition.

Fair association cannot conduct a dance in its own building on the fair grounds within limits of a city without obtaining a license from city. *Op. Atty. Gen.* (772c-4), July 15, 1940.

10163. Issuance of permit.

Op. Atty. Gen. (772c-4), July 15, 1940; note under §10161.

10165. Applications.

Section is still in force and effect as affecting direct or indirect communication with any room where intoxicating liquor is sold. *Op. Atty. Gen.* (802a-3), Nov. 29, 1940.

ABORTION, ETC.

10178. Evidence.

Dying declaration of victim of a homicide including a case where death results from an illegal abortion, concerning facts and circumstances of infliction of fatal injury are admissible upon trial of person charged with having committed the abortion and homicide. *State v. Brown*, 296NW582. See Dun. Dig. 2461.

BIGAMY—ADULTERY, ETC.

10180. Bigamy defined—How punished—Exceptions.

Prosecution for bigamy cannot be based upon a common law marriage, since such a marriage cannot be established where some impediment exists. *Op. Atty. Gen.*, (133B-10), Sept. 21, 1939.

10182. Incest.—Whenever any male and female persons, nearer of kin to each other than first cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, each shall be guilty of incest, and be punished by imprisonment in the state prison for not more than ten years.

No male or female person under the age of 18 years shall be excused from attending and testifying, or producing any evidence before any court, magistrate, referee or grand jury, upon any investigation, proceeding or trial, for or relating to or concerned with a violation of this section or attempt to commit such violation, upon the ground that the testimony or evidence required of such person by the state may tend to convict such person of a crime or to subject such person to a penalty or forfeiture; but no such person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person may so testify or produce evidence, and no testimony so given or produced shall be received against such person upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court based upon the giving or producing of such testimony. (As amended Act Apr. 21, 1941, c. 346, §1.)

10185A. Absconding by father to evade bastardy proceedings.

Form of complaint in criminal proceedings under this section against a putative father for absconding with intent to evade paternity proceedings prescribed by attorney general. *Op. Atty. Gen.*, (133B-9), Feb. 17, 1940.

LOTTERIES

10209. Defined—A nuisance—Drawing, etc.

A filling station giving a ticket with every 50 cent purchase and awarding a prize of five gallons of gasoline each week by chance is conducting a lottery. Op. Atty. Gen., (510c-9), March 20, 1940.

A punch board constitutes a lottery notwithstanding fact that player always receives something for his money. Op. Atty. Gen. (510c-4), Dec. 11, 1940.

GAMING

10219. Swindling by cards, etc.

Maximum sentence for attempted swindling is 2½ years and minimum sentence is nothing in view of indeterminate sentence law. Op. Atty. Gen. (341k-5), July 10, 1940.

1. What constitutes.

Crime of swindling may be committed by means of a trick or scheme consisting of mere words and actions without use of a mechanical device. State v. Yurkiewicz, 292NW782. See Dun. Dig. 3740.

Fact that transaction took form of a legitimate contract and business deal does not prevent acts from constituting a swindle. Id.

2. Indictment.

An indictment for swindling may contain allegations that crime was committed by fraudulent representations of facts relating both to present or past and to future. State v. Yurkiewicz, 292NW782. See Dun. Dig. 3741.

SABBATH BREAKING, ETC.

10235. Things prohibited—Exceptions.—All horse racing, except horse racing at the annual fairs held by the various county agricultural societies of the state, gaming and shows; all noises disturbing the

peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played on the Sabbath day. (As amended Apr. 21, 1941, c. 336, §1.)

Section is not violated by bowling on Sunday. Op. Atty. Gen., (384d), Jan. 15, 1940.

Word "gaming" does not apply to playing of pool and billiards. Op. Atty. Gen., (384), Feb. 2, 1940.

Section is not violated by playing pool or billiards or bowling on Sabbath day. Op. Atty. Gen. (384a), Nov. 16, 1940.

CHAPTER 99

Crimes Against Public Health and Safety

10241. Public nuisance defined.

Fee of an abutting property owner extends to center of street or highway subject only to public easement for public use, and he may use his property for a purpose compatible with free use by public, public authorities determining how much shall be reserved for such use. Kooreny v. D., 291NW611. See Dun. Dig. 4182.

County attorney can bring an action in the name of the state to abate an unlicensed drinking place as a public nuisance under this section. Op. Atty. Gen., (133B-40), Sept. 6, 1939.

"Green River Ordinance", making it a nuisance for peddler or solicitor to call at private residences without an invitation, may or may not be valid. Op. Atty. Gen., (59a-32), Dec. 22, 1939.

Sale of 3.2 beer without a license may be restrained by injunction as a nuisance. Op. Atty. Gen. (218f-3), May 28, 1940.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

Where a club is selling liquor to its members without a license, injunction proceedings may be had against it as a nuisance. Op. Atty. Gen., (218g-15), Feb. 17, 1941.

10249. Gasoline, benzine and kerosene cans. [Repealed.]

Repealed. Laws 1941, c. 495.

10255. Deadly weapons.

There is no provision in law providing for a permit to be issued to an individual for purpose of carrying a pistol or revolver, and any informal permit obtained from local

sheriff or chief of police has no legal effect other than to aid in overcoming presumption created by this statute. Op. Atty. Gen., (201a-2), Oct. 16, 1939.

Section does not prohibit a person from carrying a concealed weapon, but places upon him burden of proving that he is carrying it for a lawful purpose. Id.

Statute does not prohibit carrying a concealed weapon, but places upon person burden of proving that he is carrying it for a lawful purpose. Op. Atty. Gen., (201a-2), Feb. 15, 1940.

10258. Blank cartridge firearms, certain fireworks; etc., prohibited.

Sale or use of fireworks, except for supervised public displays, is unlawful. Laws 1941, c. 125.

No person shall manufacture, possess, or deal in explosives without a license. Laws 1941, c. 474.

10263. Failure to ring bell, etc.

Violation of this section could not have been a contributory proximate cause of injury to a passenger who ran into 19th car of train at crossing. Krause v. C., 290 NW294. See Dun. Dig. 8197.

Testimony of a passenger in a crowded Ford that he did not hear crossing whistle sounded or locomotive bell rung, it not appearing that such passenger was listening for sounds, or that windows of Ford were open, or that he heard rumbling of freight train running at 25 miles an hour at any moment prior to Ford's collision with 19th car from front, is of no probative value as against positive testimony of several witnesses in a position to know that whistle was sounded and bell rung. Id. See Dun. Dig. 8175.

Slight negative testimony did not overcome the positive affirmative testimony that requisite train signals by bell or whistle were sounded. Engberg v. G., 290NW579. See Dun. Dig. 8175.

CHAPTER 100

Crimes Against The Public Peace

10279. Disturbing meetings—disorderly conduct.

Conviction of disorderly conduct was sustained by evidence of indecent exposure. State v. Mitchell, 290NW222. See Dun. Dig. 2751.